
In the matter of Compulsory Interest Arbitration
concerning the negotiations impasse between

DECISION AND AWARD

The City of Englewood, New Jersey

of

and

Frank A. Mason, Arbitrator

Englewood Police Department
Supervisory Officers Association

and

New Jersey State Policemen's Benevolent
Association, Inc., Local 216, City of Englewood

N. J. Public Employment Relations Commission
Docket IA-2011-057

APPEARANCES

FOR THE CITY: Joseph Hannon, Esq., Genova Burns & Giantomasi

Timothy J. Dacey, City Manager

Arielle Greenbaum Saposh, Director, Human Resources

FOR THE UNIONS: Richard D. Loccke, Esq., Loccke Correia Limsky & Bukosky

Fred Pulice, SOA President

Kevin Hayes, SOA Vice President

Chris Kedersha, President, PBA

Carlos Calderin, PBA Delegate; Matt De La Rosa, SOA member

This case was assigned by the N. J. State Public Employment Relations Commission as provided by the legislation which governs the interest arbitration process and imposes budget limitations on the Employer. The parties first met on August 12, 2011. At that time there was an apparent Agreement reached by lengthy mediation and subject to approval by the principals of each party. Later it became apparent that those approvals were not forthcoming. We then scheduled a further hearing on August 23, 2011 and, after lengthy discussions of the issues, set a date for filing post hearing briefs.

FINAL PROPOSALS OF THE PARTIES

The final offer of the Employer was for a three year Agreement for the period from January 1, 2011 through December 31, 2013. For each of the three years there was to be a 0% increase in base salary but normal increments to be paid. There was a demand that schedule A. for the PBA Agreement be amended to include a guide for new hires which would include eight steps. Muster pay to be eliminated; longevity pay for new hires to be eliminated and the minimum pay for overtime reduced from three hours to two hours. There would be a reduction of pay for Holidays from 13 to 12. In the article concerning vacations there would be a change which would eliminate the clause which provides that an employee who uses fewer than 8 sick days in a calendar year would be awarded an additional four vacation days in the following calendar year to be approved by the chief.

In addition there would be elimination of the clauses in the Personal Leave portion of the Agreement which provide three days off for a members wedding and the provision of a single day off when changing permanent address. Further the sick leave payoff at retirement shall be a maximum of \$12,000. Lastly the Employer seeks to remove the clause which provided for a reopener of the Agreement in the event of furloughs for members.

The SOA/PBA final offer was for a four year Agreement from January 1, 2011 and concluding on December 31, 2014. The demand was for a salary increase of 3% on January 1st of each year plus normal step movements where available. The current guide for Sergeants would be adjusted by elimination of the first step.

The Required Statutory Criteria, in abbreviated form.

- A. The interests and welfare of the public.
- B. Comparison of the wages, salaries, hours and conditions of employment...with others performing the same or similar services and with other employees generally.
- C. The overall compensation currently received including wages and benefits.
- D. Stipulations of the parties.
- E. The lawfull authority of the Employer including limitations imposed by law.
- F. The financial impact on the governing unit, its residents and taxpayers. It should include, to the extent evidence is introduced, the impact on taxes.
- G. The cost of living.
- H. The continuity and stability of employment.

I. Statutory restrictions imposed on the employer.

The City's supporting argument is first that the offer is fair and reasonable. This is based on its concerns for the financial insecurity of the City, the recession and the impact on taxpayers. It also sites the relatively good position of the police officers both as to direct compensation and comprehensive benefits. It places great weight on the first factor, the interests and welfare of the public. I join in this as the most relevant of the statutory factors for reasons I will outline below. The Employer asserts that the public is a silent partner to these negotiations and must be given consideration as it is the source of the lion's share of the required funding and that the distribution of those funds should be determined with great consideration both as to the quantity available as well as the specific utilization of funds for a wide range of purposes beyond the improvement of salaries which are of vital importance as to services and long term ceilings on taxes. It notes that to demonstrate the statutory mandate is being considered the use of all public funds must be carefully allocated so that the best interests of the public is reflected. It claims that the now very high level of compensation for police as contrasted to the income levels of residents and the needs for services as well as long term impact of expenditure decisions be given great weight. There is a great need for those expenditures to be as conservative as is practicable both to preclude their eventual growth as well as to meet community needs, programs and improvements which have been neglected.

Although there is no claim of potential insolvency there was shown a number of indications which threaten the financial health of the City. In the past year the income from investments has declined from \$571 thousand to just \$42 thousand and there is no likelihood of any substantial increase in sight. State aid decreased from \$4,098,447 in 2006 to \$2,763,296 in 2011, a reduction of 32.6%. The taxes on real estate continue to be threatened as the adjusted value of real estate holdings completed this year show a decline from \$5.17 billion to \$4.39 billion with almost \$70 billion of that attributable to residential values. There has been a sharply increasing demand for tax appeals which now have reached more than \$46 Million while budget funds for those appeals are only \$740 thousand in reserves. Worsening this picture is the fact that no substantial new revenue sources are on the table, in contrast to the \$351 million added during the period of the prior six years.

Further red flags exist. The surplus, which had been between \$4.5 and \$5 million for several years fell to \$2.6 million in 2010 but up a bit to \$3 billion anticipated for 2011. A dangerous trend due in large to failing fund balances. While property tax rates were not raised in the past year the resistance to such increases is great and the current budget is heavily dependent on taxes as other sources have dwindled. As can be expected there is a ground swell of resistance to property tax increases and the City feels it has squeezed about as much revenue from other sources as it can, given recent raises in fees and other sources. There is the increased spending due to energy costs rising and the need for capital improvements which have been neglected. These include road repairs and a high priority to renovate a firehouse. The costs off health insurance are rising at an

unprecedented rate and though there will be some offset from the new law the prospect is costs of health benefits and pensions will require more funds from the City as well. There is a great concern as to the danger of more City borrowing to overcome the shortfalls of these several income streams. The credit rating of the City will be exposed by further spending and borrowing especially as income from all sources dwindles. Another danger which a prudent fiscal management should be concerned about and try to avoid.

Thus the employer has placed a great deal of emphasis on this criterion and with just cause. There is an increasing awareness of the fact that the residents of the City are increasingly in a financial bind due to lost wages, lack of income on investments and declining values of savings intended to provide for the future. All of this leads to resistance to more taxation and the demand that the resources of the City be carefully managed. The City property taxes have increased by 37.5% since 2005. The 44% increase in tax appeals lends credibility to these concerns. Thus the conclusion that the interests of the public are best addressed by a conservative approach if it can be achieved.

The financial impact of an award requires my attention to the many circumstances noted above which define the fiscal decline of the City's income and resources chain as well as the lessening of future income from many sources now reducing or eliminating that support. It also must be noted again the shrinking of fund values and pressure for tax reductions. All of these indicia suggest a conservative approach to future spending. The City has begun that by reducing the 4%+ agreements of the past to half or less in recent Agreements with its non-police personnel. Those persons are generally paid 40 to 60% less than police and are having difficulty making ends meet. The medium household income in the City was \$70,357, while police officers earned 50+% more. The City sees its options as to increasing revenue to be extremely limited, thus a budget without increases and within the control of the City is seen as essential and to ignore this condition would lead to favoring one objective while ignoring important needs. There would be no support for this type of indifference from the public. Especially as the average home owner has seen his property decline precipitously in value and his fiscal resources shrinking.

The City sees its final offer fully justified while the proposal of the Unions is seen as irresponsible. Somewhere in between there is a reasonable solution. I intend to be guided by all of the considerations relevant in my conclusions.

The comparison of wages and conditions of employment with others is not as simple as might be thought. However, both parties presented information concerning police in the reasonably surrounding communities. The Employer maintains the City is highly competitive as to police pay rates. The assertion is that the top step for policeman in Englewood at \$112,152 compares favorably to the average in Bergen County of \$107,529 and the top step for lieutenants is \$123,998 while the average is \$121,705. Englewood Captains salary at top pay was \$4,338 greater than the County average in 2010. The Employer further asserts that these officers at top pay have very generous vacation allowances and some advantages such as free prescription drug coverage not found elsewhere. They also get a very substantial amount of overtime income.

The Unions offered two charts which describe base rate comparisons with other communities and the County Prosecutor's Office for the 2010 year. In that comparison the pay for Englewood was just .79% below the average, or less than one percent. Had the Prosecutor's Office and Mahwah not been included the situation would have been the average of the remaining 15 at \$111,961 compared to the Englewood pay of 112,152. I discount both the Prosecutor's Office because it doesn't function as a community police organization does, and Mahwah because it is a larger community and notoriously higher in pay. My conclusion is that among the remaining fifteen communities offered Englewood paid slightly more than the average and placed in the middle of those fifteen communities.

What may tend to reinforce the Union's position more is the data which was submitted relating to wage increases granted after 2010. In 2011 for 24 communities the range of new pay rates was improved between 1.95 and 4.5%. None were at a zero. The exhibit prepared by the Union wrongly computed the average increase as 4% but it actually was 3.4% by my calculations. The 2012 advertised increase for 17 communities was 3.15% which was accurate. There were a scattered few increases shown for 2013 but insufficient numerically to use as the basis for the entire groups changes. However, one can hardly overlook the fact that there were no zero increases, at least for these selected communities. Thus the proposal of three years of zero increases by the City is entirely inconsistent with that of neighboring towns where the minimum increase was 1.95% for 2011 and the same for 2012. I make note of this as an observation of the general climate in which these employees are working, and not as justification of what should be the guide or mandate for Englewood.

The Unions also ask that I be reminded of the fact that their actual take home pay will decrease over the term of the Agreement by virtue of the increased share of the costs of health benefits which will be shifted to the officers, to the advantage of the employer which would have otherwise borne those increases entirely. The Union calculates the loss of take home earnings to be more than \$7000 for each officer having family coverage when the level of their contribution reaches 35% in 2014. When the 1.5% increase in pension contribution is added later this year there will be a further diminishment of take home pay. Thus the argument is advanced that the 3% increase proposed for each year of a new Agreement will not keep pace with the deductions which are to be imposed. Their claim is that over the term of the Agreement there is every likelihood that no gain would be realized and that if the proposal of the City were to be awarded the actual effect would be a very substantial reduction of take home pay.

These observations are not without merit and will be given consideration in my determination of this situation. One of the greatest expenses experienced by the Employer has been the costs related to overtime which border on \$800,000 per year! A very substantial expense considering the fiscal situation facing the City. The City asks that I invoke a change in the overtime regulations in order to reduce those costs. I am loathe to do that without much more detail as to the causes and the apparent lack of controls now in existence. It appears to me that there has been no effective means adopted to restrict

these costs. However, the staff has been reduced by retirements and no replacements made due to lack of funds. Thus the required services to be provided may frequently result in overtime. Perhaps this should be re-evaluated as adding some new officers might take away much more of these costs than their pay checks. My concern is that I should not impose a specific change in these proceedings without clear indication of the impact such might have. Thus I will not impose a judgment but do recommend careful analysis of the situation and action which might result in a more efficient work force.

The Employer has proposed the elimination of two relatively minor provisions of the Agreement which provide special paid time off. These are a three day leave for the individual getting married and one day for change of residence. There is adequate provision of personal leave and vacation leave for the prudent officer to fulfill these situations/obligations and although they seem of minor impact on the overall costs of the police department I believe elimination to be justified, particularly as it does not seriously change the circumstances of most employees. Thus I award these changes.

The Employer also seeks to limit the payout of accumulated sick leave at retirement to a limit of \$12000. This is an issue which has been addressed by the State Legislature. In the past the Legislature has modified the sick leave payout by changing it from \$12000 to \$15000 for employees of the State. There has been an initiative to make such a change for all public employees placed before the Legislature. There is anticipated action on this matter. Therefore I will not undertake instituting such here. If the Legislature has focused its attention on this issue there is little need for me to pre-judge their determination. While it would be of considerable relief for this Employer the action or inaction of the Legislature should be definitive as to the public's interests. Again, this has been a matter for the parties to negotiate in the past and which is reflected in their long term agreements to confirm this benefit. There is no compelling reason for me to intercede at this point and I will not.

Further along similar lines the parties agreed to provide an extra four vacation days for any officer having used less than eight sick days in a calendar year. This would seemingly mean that most, if not all, officers would earn this each year. I do not know what the persuasive argument may have been to initiate this "benefit" but if there was one it probably still exists. Again I will not interfere with such previously agreed upon issues without demonstrated need to do so. This reasoning shall also pertain to the issue of reducing holidays as provided by accord in the Agreement.

Lastly I turn my attention to the request for a changed salary guide for new employees. I will award this as it seems essential to reduce the rapid escalation of wages as exists in the current guide. I will also alter the present guide by adding one step half way between the current step 2 and step 3 because the gap between those steps has exceeded \$29000. This is a much greater increase than exists at any other step, and the change will make the structure more rational. There is no substantial justification for what amounts to a nearly fifty percent wage increase for a single year of experience. To a large extent the guide for future hires should be seen as more realistic to the taxpayers and everyone concerned

while providing very generous wage adjustments. The value to the Employer is that it will experience some needed savings as the new employee moves more slowly toward maximum pay, a sorely needed result which should have minimal impact on recruitment while saving many dollars

In essence I have been addressing the interests and welfare of the public by attempting to make reasonable savings without great harm to the employees who have worked hard even when short handed. I have also considered the issue of comparison of the wages and conditions of work found in Englewood. Until now the overall compensation has been very competitive with pay around or slightly higher than nearby communities. The question raised is what will be the impact should the zero plan advanced by the Employer for a three year period be confirmed by my award. Clearly the evidence collected to date indicates none of the neighboring communities have adopted a zero position even for a one year period. This suggests the advanced posture of the Employer, if awarded, would have a substantially negative impact on these officers. This is particularly so when they are facing payroll deductions pressed upon them by law. I am also concerned that the Employer has not been effectively in control of the huge overtime spending which could reduce the squeeze on available funds for basic wages. It is my conviction that some wage increases are appropriate given all of the circumstances and to some extent alleviated by changes which will result from this proceeding.

I have avoided making any lengthy comparison of wages to the private sector as police work doesn't lend itself to that comparison. However, I do note that the taxpaying public has been under increasing pressure over recent years as property taxes have risen and their savings and income from investments have been shrinking. To provide a very substantial pay increase to the police, the highest paid group compared to average of the City's population, would be unjustifiable. Other conditions of police employment are very similar to other public employers and those of Englewood fare well by comparison. These employees have reasonably generous wages and certainly a comprehensive package of benefits.

There were no stipulations by the parties.

The limitations imposed under statutes on the Employer will not be an issue herein. The increases in costs will be substantially offset by modifications awarded and the increases in costs will be modest and well within the limitations imposed under the controlling laws. It is my understanding that this award will not precipitate any level of costs such as to influence the issue of taxation. The costs, as offset to some degree by changes made herein, should be modest and the safety of a three year contract should provide the Employer with long term assurances as to the control of costs for police services. Perhaps there will be an incentive to reduce some costs which have been out of control; specifically overtime.

The cost of living has been very much under control for the recent two years. It may very well change. However the costs related to this award will not exceed those which are

likely as the economy exists at this time. The real possibility is that the cost of living may begin to rise and the income levels of the employees covered will lag behind. To some extent the imposition of higher costs for health and pension benefits are examples of how these employees will fare in spite of modest wage increases. And if one were to speculate the federal government is more likely to increase, rather than decrease, tax pressure for employees at this level of compensation as well. I therefore conclude that the modest wage increases to be awarded here will not appear to have been overly generous, rather a limited attempt to keep employees afloat.

I believe this award will be seen as a reasonable solution to the circumstances faced by the Employer as well as the employees it affects. It is not a win/win for either party but designed to be acceptable under the conditions faced which I believe are understood by them. Certainly it will not precipitate any turnover and will maintain an employment environment attractive to many seeking a career in police work.

Lastly, as noted above, I do not believe this award will in any way be considered to have invaded the statutory requirements of the Employer or its capacity to function within the statutory limitations imposed by Section 10 of P.L.2007, c. 62(C. 40A-45.45). The new costs imposed by my award will not require an increase in property tax rates or be violative of any other limitation under law.

With regard to the PBA Salary Schedule as it is set forth as effective January 1, 2010 there shall be imposed a new step between step 2 and step 3. This new step will set a salary of \$73,367. Other steps are to be re-numbered accordingly so that there will be a step 6 as the maximum at \$112,153. Those pay rates will be in effect until July 1, 2011 at which point there will be a 2% adjustment. Officers on the payroll will be placed in accordance with the new steps with retroactive pay as of July 1, 2011.

There shall be an additional 2% increase in the Salary Guide effective on April 1, 2012 and all employees eligible shall be moved up in pay to the appropriate step as is the usual procedure. There shall be a further 2% increase in pay effective on January 1, 2013 and employees within the original Salary Schedule will again be moved to the appropriate position on that Schedule.

Employees hired after the date of this award shall be placed on a new Salary Schedule which has the same New Hire rate of \$37,640 and a maximum rate of \$112,153. The steps for annual increases shall be step 1. \$46,000; step 2. \$55,000; step 3. \$64,000; step 4. \$73,000; step 5, \$82,000; step 6, \$91,000; step 7, \$100,000; step 8, \$112,153.

Employees in this new salary schedule shall receive the same 2% adjustments as are provided above and on the same dates as noted there. Increment movement will be on the normal annual service schedule.

The SOA Salary Schedule for all ranks shall be adjusted by the same 2% increases as noted above and on the same dates during the three years of the new contract period. In

addition step one in the Sergeants schedule shall be eliminated whenever the promotion to the rank of sergeant is from the maximum rate for patrolman as it provides virtually no increase over the maximum step for patrolman. For promotions from any step below the maximum of the patrolman rate it shall remain the minimum for sergeant.

AWARD

The terms of my award are as set forth above for the term of the new Agreement which shall be from January 1, 2011 through December 31, 2013. All other issues advanced by either party should be deemed to have been rejected.



Frank A. Mason

On this 3rd day of September before me personally came and appeared Frank A. Mason, to me known and known to be the individual described in and who, in my presence, executed the foregoing opinion and award and he acknowledged to me that he executed the same.



BARBARA L. SCHWEITZER
Notary Public - New Jersey
Somerset County
My Commission Expires August 22, 2012